

NWX-DEPARTMENT OF INTERIOR-NBC (US)

Moderator: Jennifer Romero
November 4, 2015
12:30 pm CT*

Coordinator: Welcome, and thank you for standing by. At this time, all participants are on a listen-only mode until the comment section of today's conference. At that time, to provide a comment, press Star-1 on your phone, and record your name at the prompt. This call is being recorded. If you have any objections, you may disconnect at this time.

I would now like to turn the call over to Mr. Kris Sarri. Sir, you may begin.
Thank you.

Kris Sarri: Good afternoon, and thank you, (Lisa). Welcome to the Tribal Consultation teleconference on the Department of the Interior proposed rule entitled Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community. I'm Kris Sarri, principal Deputy Assistant Secretary for Policy Management and Budget. Again, I want to thank you for joining us.

**Caller names were transcribed phonetically. We regret any spelling inaccuracies.*

Before we open up the lines for the Tribal Consultation, I'd like to introduce the Department of Interior officials sitting in DC today. We have Jody Cummings, our Deputy Solicitor, and (Jennifer Romero), Senior Advisor to the Secretary.

The Department greatly appreciates its close working relationship with tribes. And we welcome those tribal leaders who have joined us for the consultation today. Formal consultation is an essential feature of the government-to-government relationship between the United States and each federally-recognized tribe in the Continental United States. We look forward to a productive session today.

If there are callers on the line who would like to participate but are not tribal leaders or representatives of tribal government, we would urge you to either disconnect now and call back between 2:00 and 2:15 today, or just be placed in hold until the tribal leaders or representatives finish with their comments.

The federal register's notice for this teleconference indicates that this call is reserved for elected or duly appointed representatives of federally recognized Indian tribes in the Continental United States and may be closed to the public.

However, so that all may participate today, we are going to hear from tribal leaders and representatives during the first 30 minutes or so of the call, which should accommodate the tribal leaders in the queue. When those leaders finish their comments, we will open up the teleconference to other callers if other callers are on the line. We welcome all comments from tribal leaders at this consultation, and will not open up the teleconference until tribal leaders have had their chance to provide comments.

With that, I want to turn it over to Jody Cummings to give a presentation on the proposed rule.

Jody Cummings: Thank you, Kris. I won't be able to cover everything contained in the Notice of Proposed Rulemaking, but I want to give a brief overview of the proposal to give folks some context for our call today. I encourage everyone to read that document for themselves. It's available on the Department's Web site if you search for Office of Native Hawaiian Relations online. It is also available at www.regulations.gov by searching for the term Native Hawaiian, or by the rules docket number, DOI-2015-0005. Let me give that docket number one more time. DOI-2015-0005.

First, let me give a little bit of background. The Native Hawaiian community has one of the largest indigenous populations in the United States. But unlike more than 500 federally-recognized Native communities on the continent, Native Hawaiians lack both an organized government and a formal government-to-government relationship with the United States.

In response to requests from the Native Hawaiian community, the Department published an Advance Notice of Proposed Rulemaking in June 2014. That document solicited public comment regarding whether the Department should assist with, first, reorganization of a Native Hawaiian government, and then second, reestablishment of a formal government-to-government relationship with the Native Hawaiian community.

The Department conducted a total of 15 public hearings in Hawaii and five mainland regional tribal consultations in Indian Country, resulting in over 40 hours of oral testimony on the Advance Notice of Proposed Rulemaking. By the end of the comment period in August 2014, the Department received over

5000 written comments for the record. We greatly appreciate tribes' interest and the input we received during those consultations and in written comments.

Following review of the oral and written comments, the Department determined that it would not propose a rule that attempted to involve the Department with organization of a Native Hawaiian government or setting the form or structure of that government. The Native Hawaiian community itself should determine whether and how to reorganize a government.

The Department has accordingly proposed a more limited role, creating a process that the Secretary of the Interior would use to determine whether to reestablish a formal government-to-government relationship if the Native Hawaiian community forms a government that then seeks such a relationship with the United States.

The proposed rule explains that a formal government-to-government relationship would allow the United States to more effectively implement and administer the special political and trust relationship that Congress already established with the Native Hawaiian community by enacting more than 150 federal statutes over the last century.

Let me briefly address the scope of the proposed rule, which involves a multi-step process. First, the Native Hawaiian community would draft a constitution or other governing document. The community would then vote on the constitution in a ratification referendum. If the constitution is approved, the community would elect leaders of the new government. Then the new government could -- if it decided to do so -- submit to the Secretary of the Interior a request to reestablish a government-to-government relationship.

Applying specific criteria set forth in the proposed rule, the Secretary would decide whether to grant or deny the request. The Native Hawaiian community's government-to-government relationship with the United States would then be the same under the US Constitution and federal law as that of any federally-recognized tribe in the Continental United States. And the Native Hawaiian government would be recognized as having the same inherent sovereign governmental authority, subject to Congress's plenary authority.

I want to emphasize that the Native Hawaiian community would make all of the key decisions in this process. The community would draft the governing document, ratify that document, elect leaders, and decide whether to seek a formal relationship with the United States. The federal government's role would be limited to receiving a request from the new government and deciding whether the request meets the criteria of the proposed rule.

One important thing we heard in previous public comments is that those Native Hawaiians who are eligible for benefits under the Hawaiian Home Commission Act were concerned about protection of their rights. The proposed rule contains language explaining that it does not affect the rights of beneficiaries. The rule also provides that the ratification vote would have to be supported by a majority of the HHCA beneficiaries who vote, as well as a majority of Native Hawaiians generally.

Again, this is just a short overview of the proposal. I encourage everyone to read the proposal for themselves and comment today during this call or in writing. Thanks very much, Kris.

Kris Sarri: Thank you, Jody. Now I would like to provide some brief guidelines for the call. Today's call is scheduled for three hours. The call will be recorded and

transcribed for the record. A written transcript of this call will be available for review on the Office of Native Hawaiian Relations Web site at www.doi.gov/ohr. That should be available within a few days. Please check the Web site regularly for updates.

We urge you to be specific, explain the reasoning behind your comment, and address the proposed rule. We are very interested in hearing your concise comments on the procedure and the criteria that is set out in the proposed Rule for Reestablishing a Formal Government-to-Government Relationship Between the United States and the Native Hawaiian Community.

While there is no time limit for your remarks today, please be respectful of other callers by being as succinct as possible in your testimony. In addition to your oral testimony provided today, written comments on the proposed rule may be submitted any time until December 30, 2015. Instructions for submitting written comments can be found on Page 59114 of the Federal Register Notice announcing the proposed rule, which can be found at www.federalregister.gov or the Web site for the Office of Native Hawaiian Relations.

This call is facilitated by an operator, (Lisa), who will manage the time and patch speakers through to the panel when it is their time to speak. All callers are able to listen. Callers do not have to testify for the record. You may just listen. Unfortunately, we are unable to provide translation services. So if you would like to testify in your native language, please provide a translation for us during your allotted speaking time, so that we too can understand the meaning of your comment.

Again, thank you very much for taking time for this call today. We really do value your comments. And now we'd like to take the first caller.

Coordinator: We will now begin the comment session. If you would like to provide a comment, please press Star 1, record your first and last name at the prompt. To withdraw your comment, press Star 2. Again, to provide a comment, please press Star-1 and record your name.

One moment please for our first comment.

Our first comment comes from (Teresa Nakama). Your line is now open.

(Teresa Nakama): Thank you for allowing me to have this opportunity to speak to you this morning. I am a Hawaiian national here on the island of Hawaii, and I am appalled that this is even going forward, because during the public hearings that you held here on the island of Hawaii, the majority - the vast majority said no to this process.

Kris Sarri: (Teresa), I'd like to do a - this is a call for tribal consultation. And as I mentioned at the very top, we'd like to hear first from tribal leaders. You're welcome to listen in until after we've had that opportunity. We want to at least allow the first half hour of this phone call for tribal leaders. So I just request that for now you hold your comments until a little bit later in the call to allow for tribal leaders in this consultation to occur. Thank you.

(Teresa Nakama): Thank you.

Coordinator: We have no comments at this time. As a reminder, if you would like to make a comment, please press Star 1, record your first and last name, and please state if you are a tribal leader. To withdraw your comment, press Star 2. Again, to provide a comment, please press Star 1 and record your name.

Kris Sarri: For everyone listening on the call, this is Kris Sarri. We're going to hold the line until 2:00 for tribal leaders to have a chance to comment. After that we'll open it up more broadly. We will ask, however, that if there is a tribal leader that joins the call after 2:00 that they are kind of moved to the front of the queue, since this is a tribal consultation call. So, appreciate everybody on the line, but we will hold it for about 10 more minutes.

Coordinator: Pardon me. As a reminder, if you would like to make a comment, please press Star 1, record your first and last name. Please let us know if you are a tribal leader or not. Give us one moment, please, for any questions or comments.

Kris Sarri: Hi, once again, this is Kris Sarri. It is now 2:00, so we wanted to open the line to callers other than tribal leaders. Thank you.

Coordinator: We do have a comment from (Teresa Nakama). Your line is open.

(Teresa Nakama): Thank you. This is (Teresa Nakama) from (unintelligible) Hawaii. And I'd like to make a comment on the proposed rule. I was a party - I'm associated (DIFC) and also (unintelligible) of Hawaii Island. My comment this morning and your afternoon is I opposed the proposed federal rule. It is undesirable and most harmful to us Kanaka Maoli people of Hawaii and all Hawaii in so many ways as you can imagine.

The history that's concocted by the United States is false, it's misleading, and it is deliberately used by United States since 1898. We have never been a territory of Hawaii. Rather, the United States has occupied Hawaii wrongfully since 1898. This has been a crime and a violation of all human rights for our people of Hawaii.

Your history of relationships between United States and Hawaii has been flawed and confused in the justification of your rule. The proposed rule is unconscionable and a violation of our international laws - the simple human dignity by forcing the acceptance of one of the most enormous (unintelligible) violations of international laws.

Your history has been false, full of broken promises, oppressions, deceptions, death, racism, and basic violations of human rights, constitutional rights, that continue along with this proposed rulemaking process. Myself and thousands of others who know the true history and political status of our Hawaiian lands oppose this rule and any further efforts to engage and continue to ignore the historical and legal facts.

Throughout the public hearing process, the vast majority informed DoI -- and now we're informing the tribal leaders -- no to this process. What part of our public input throughout the public hearings that the Department of the Interior does not know the understanding and the meaning of no, we do not want to be recognized as a tribe. We are indigenous people of our island. We are sovereign - Kingdom of Hawaii still exists.

What part of the truth that you do not understand - we do not want to be under federal rule. Nor under the United States government. The Kingdom of Hawaii still exists and we are recognized by international countries. We do not have a treaty with America annexing Hawaii to be under the United States.

To conclude, my organization, myself, and thousands of others oppose this proposed federal rule-making process. Thank you very much.

Coordinator: We have no further comments at this time. Excuse me, we do have a comment from Ms. Kame'eleihiwa. Your line is open.

Lilikala Kame'eleihiwa: Aloha. My name is Lilikala Kame'eleihiwa. I am a long-time member of Ka Lahui Hawaii. It organized a constitution in 1987, and for 17 years seated a legislature of an independent Hawaiian nation. When Ka Lahui Hawaii failed, we still continue to do work in the community. I'm also a professor of 30 years at the Kamakakuokalani Center for Hawaiian Studies, where I teach Hawaiian culture and Hawaiian politics.

I'm calling today to state my support for the DOI rules on Native Hawaiians. Because all the work that Ka Lahui Hawaii did, we could not really provide one acre of land for our people without some kind of an agreement with the US Federal Government. Today there are many people -- Hawaiian and non-Hawaiian -- who are seeking independence for Hawaii from America. They may be - perhaps 10% of the population. Perhaps 5%. We don't know, because we haven't seen the rolls.

However, they have an important point of view to express. My worry is that many of those people who want independence do not support any rights for Native Hawaiians at all. No rights for Hawaiian land, or Hawaiian housing, or Hawaiian language, or Hawaiian culture, or our education.

So I believe before any discussion goes on about independence and the rights the Kingdom of Hawaii had under international law, that we as Hawaiians must go forward to form a government. And I am a delegate in the Nai Aupuni process for the aha to form a constitutional convention. We must seat a government. And I'm arguing, from the very beginning we should seek federal recognition in order that we may provide land and housing for our people.

As you know, 48% of all Hawaiians now have been forced to leave Hawaii -- our homeland where our ancestors lived for the last 100 generations -- we've been forced to leave Hawaii and live elsewhere in America and the rest of the world because of the high cost of living in Hawaii. Where shacks are going for 700,000 and normal houses cost \$1 million.

Every week, another part of our family leaves. We cannot wait any longer. We must have federal recognition. We must have control over our land base. We must be able to afford our people the right to have housing. We want to make sure that the federal government -- who realizes and who has (stated) wrong that's been done -- will work with us in order to provide basic human rights for our people.

Once lands are demarcated as Hawaiian lands, once our rights as Native Hawaiians under federal recognition are established for land, for housing, for language, for culture -- that we can survive until the next generation as Native Hawaiians -- then we can talk about perhaps independence. But there's no use talking about independence where Hawaiians have no rights.

So I want to thank the federal government. I want to thank the DOI for supporting us. Without you, I don't think we're going to survive culturally as a people for the next 30 years. And so those are my comments. And thank you very much. I hope the tribal leaders will continue to support us as they have for many, many years. We've had unanimous support from tribal leaders -- both Alaska Natives and Native America -- in support of federal recognition for Native Hawaiians. Thank you.

Coordinator: Our next comment comes from (David Kagulata). Your line is open.

(David Kagulata): Hi. My name is (David Kagulata), and I am a Native Hawaiian. I oppose the proposed federal rule regarding the creation of a government-to-government relationship between the United States and the Hawaiian people for many reasons. One of the most important of these reasons is that by the terms of the proposed rules, the Hawaiian governing entity will not receive any land or support. The Hawaiian governing entity will not be allowed to sue or negotiate for past wrongs committed by the United States.

One of the most egregious and unjust wrongs that must be addressed is the wrongful taking of the United States of the what - of the crown and government lands. Some 1.8 million acres which the United States claimed by reason that the republic tasked those lands to the United States by the Joint Resolution of 1898. The United States taking of those lands was pure theft.

Those lands were (unintelligible) or ceded to the United States by its puppet government -- the government of the Republic of Hawaii -- the fake state of Hawaii. Those lands were not (unintelligible) to the United States by the Joint Resolution of 1898, and I'll prove that below, further. Even the puppet Dole government of the Republic of Hawaii rejected the claim of the United States that a joint resolution could acquire those lands.

Only by treaty -- which failed 1897-98 -- could the United States lawfully take title to the lands of Hawaii. The treaty failed. The United States took the crown and government lands by force and without compensation. Even today, the United States cannot prove unbroken title to those crown and government lands. The proposed Department of Interior rule is unacceptable and an insult to the Kanaka Maoli for many reasons. And this is just one - you'll hear a lot more written -- I'm sure -- in the public testimony opposing the rule in the days to come.

The proposed federal rule is totally unacceptable and will -- if promulgated -- violate the rights under international law, United States administrative law, and the basic right of self-determination as resides in every Kanaka Maoli. For these reasons I oppose the proposed federal rule to (unintelligible) is set forth.

Proof Number 1. The government of the Republic of Hawaii never ceded these lands to the United States, nor is there a document conveying such lands to the United States. The United States relies on the Joint Resolution of 1898 as the basis of which the Republic of Hawaii conveyed these crown and government lands -- some 1.8 million acres -- to the United States. The joint resolution was only an act, a bill of the United States, which is not a contract nor a treaty between two nations. (It was also a bill) of Congress that could not acquire lands in Japan or the United Kingdom, or anywhere else in the world.

And that's all I have for right now. I'm just at a loss for words. And these people here, the Nai Aupuni people, you guys are (hewa) - boy, I've...

Coordinator: Once again, if you'd like to make a comment, please press Star 1, record your first and last name when prompted. Thank you. Our next comment comes from Ms. (Michelan Trainer). Your line is now open.

(Michelan Trainer): Aloha, everyone. Thank you anakala, for saying all of that. It saves me a lot of trouble of having to repeat all of that. (Unintelligible) I support all of the words that you just said. My primary question to the Department of the Interior is why are we seeking - why would a Native Hawaiian governing entity seek federal recognition if -- even in the DOI proposed rules -- it states that our programs are already protected and that our status is already protected. Why would we need to have a formal relationship if all of those things are already protected?

And then furthermore, I want to again ask the question that the anakala just asked before me, is that because the DOI rules are saying that if a Native Hawaiian governing entity is established and it goes for the federal recognition, then it would be subject to the same relationship as Native American Indians have with the Department of the Interior. And if that's true then is it true that we would lose the right to sue or litigate against the state and against the federal government for reparations and for redress against all of the illegal annexation of the Hawaiian islands and the Hawaiian kingdom?

And so I would like to have a definitive answer from the Department of the Interior if this is true. Would we truly lose that ability to litigate against the state and against the federal government? Thank you.

Coordinator: Next we have (Jacob Aki). Your line is open.

(Jacob Aki): Aloha mai kakou. My name is (Jacob Aki) and I am a Native Hawaiian student at the University of Hawaii at Manoa. I just want to give thanks to the Department of Interior for hosting this teleconference, and I would also like to send a big aloha to our brothers and sisters from across Indian country, who have spent years, you know, supporting us in our goals.

I want to say that I support the proposed rules. I believe that it provides a pathway for the Native Hawaiian people to seek a government-to-government relationship with the federal government, and it will protect laws that benefit our people. These include funding for scholarships in the Native Hawaiian revolving loan program, the Native Hawaiian Health Act, the Native Hawaiian Education Act, the Native Languages Act, and many more federal laws that provide funding for our people.

I believe that it is important that in this day and age that our people protect our rights. And protects our Alii trusts that benefit a large number of our people. I just wanted to thank again the Department for holding this conference, and thank you to those across Indian Country who have supported us all these years to help us seek our self-determination. Thank you.

Coordinator: We have no other comments at this time. We have another comment from Ms. (Michelan Trainer). Your line is open.

(Michelan Trainer): Thank you, mahalo. Yes. My biggest question, though, is, in the DoI proposed rules, it already states that all of those protections of those programs -- those Native Hawaiian programs that you mentioned -- that they're already protected. And that even the Hawaiian Homes Commission Act and the HHLRA - that those things will remain protected regardless of whether or not we get federal recognition or not.

And so this is the big question that I have is, why do we need seek a relationship - a special relationship of federal recognition with the United States? Why do we have to seek for that when we already have it? And the point I'm making is if we do get this special - you know, this formal government-to-government relationship, if we get federal recognition, what is the difference than what we already have now?

Well, the difference is that we will be subject to the plenary power of Congress, and that we will be subject to the same relationships that American Indian tribes have with the United States. And in the federal handbook of American Indian law, it shows over and over and over again that they cannot sue or litigate against the state or against the federal government for wrongs done to them as a people.

And this is why I would like a definitive answer from the Department of the Interior if federal recognition will remove our ability as a Native Hawaiian government to seek redress in lawful means through litigation from the state and from the federal government. If it will prevent us from doing that. And this is super important. Because I think a lot of us - you know, we all want to protect our monies that come from anywhere.

But if it means that we are going to lose the ability to litigate future wrongs that are done to us? I don't know if it's worth it. Especially if we are already protected. If those programs are already protected, whether or not we get federal recognition. Okay, thank you. Thank you, everybody, for holding this. This is awesome. Okay, bye-bye.

Kris Sarri: All right. This is Kris Sarri at the Department of the Interior. I just wanted to remind callers that this is a tribal consultation call. We did open the line to others, but I would ask that you limit comments to the rule. We won't be doing a question-and-answer session. It is not about a dialogue between different commenters.

The comments should be on the rule Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community. We're going to continue to hold the line open for a little bit longer, as we wait to see if there's other tribal leaders that would like to participate in the phone call. Thank you.

Coordinator: Pardon me. As a reminder, if you'd like to make a comment, please press Star 1, record your first and last name when prompted. If you need to withdraw the comment, you can press Star 2. Once again, in order to make a comment, please press Star 1. Thank you.

Kris Sarri: Hi, this is Kris Sarri at the Department of the Interior. I wanted to just let folks know this call was intended for a tribal leader consultation. We haven't had any tribal leaders at this time offer any comments. We'll keep the call open until three o'clock, for approximately 20 more minutes, and then we will conclude the phone call. I would remind everyone that this Saturday there is another public comment teleconference that will be occurring. So what we'll do is, again, keep this call open for approximately 20 more minutes, and then we will conclude the phone call. Once again, we hope that we will hear some comments from tribal leaders.

Coordinator: If you would like to provide a comment on the phone lines, please press Star 1, record your first and last name when prompted. Thank you.

Kris Sarri: Hi, this is Kris Sarri at the Department of the Interior. It is approximately ten of three. We're going to plan on concluding the call at three. So I'm encouraging any tribal organizations or tribal leaders that might be on the phone and interested in comments to please provide comments during this time period. Thank you.

Coordinator: Pardon me. We do have a comment from (Jackie Pata). Your line is open.

(Jackie Pata): Hi, this is (Jackie Pata) with National Congress of American Indians. And I apologize for being a little late to get on the call, you know, we're over here at the Tribal Nations conference. But I did want to get on, because this is an important issue for us. NCAI has passed resolutions in the past and has a current resolution supporting the recognition of the Native Hawaiians. Native Hawaiians have come and appealed with NCAI. We've had many meetings throughout the years, you know, trying to come to a place where they could move forward.

And I see this current administrative proposal as a good step for allowing that to happen. I think one of the issues with Indian Country has always been to make sure that the limited resources of Indian Country weren't harmed. And I was pleased to see that as Senator Inouye, you know, spoke to tribal leaders in the past, that this proposal also still recognizes that. There will be the same funding systems for the Native Hawaiians to address their needs as well as not impacting the tribal needs.

As far as NCAI, we look forward to taking a little bit more time with this proposal. We've done a quick review and post this conference this week you'll probably hear more from us regarding any comments that we may have. And you'll be more than welcome to share them with the rest of Indian Country. And once again I want to thank the administration for having the courage to take this initiative on. And do another step in recognizing our relatives and brothers and sisters in the Pacific islands. And recognizing the importance of indigenous peoples and tribal governments. Thank you.

Kris Sarri: (Jackie), this is Kris Sarri at the Department of the Interior. Thank you very much for taking time from the tribal conference to participate in the call today. And we look forward to more comments from tribal leaders. Thank you.

(Jackie Pata): Thank you.

Kris Sarri: Hi, this is Kris Sarri at the Department of the Interior. I want to thank you all for your suggestions and comments today. As noted at the beginning of the call, the commentary concludes on December 30, 2015. The Department will consider all oral and written comments received by that deadline.

Once again I want to remind everyone that that there will be another public teleconference this Saturday, November 7. It will be at 2 pm Eastern time, 9

am Hawaii time. And the call-in number is 1-888-947-9025. Passcode is 1962786.

Thank you very much for your comments today and have a great day. Thank you.

Coordinator: Once again, thank you for joining. This now concludes today's conference. All lines may disconnect at this time.

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